

1 The first step of this process is for a party to formally suggest the death of the party upon the
2 record. On August 12, 2008, Defendants notified the Court of Plaintiffs' death by filing notices of
3 suggestion of death upon the record. (#51, #52).

4 However, Defendants have failed to complete their obligation under Rule 25. Although
5 statements noting Plaintiffs' deaths were filed with the Court, there is no indication in the record that
6 those were also served on the deceaseds' representatives or successors, as required by Rule 25. The
7 Ninth Circuit has held that Rule 25 requires two steps to be performed to trigger the 90-day period:

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9 [T]he rule requires two affirmative steps in order to trigger the running of the 90 day
10 period. First, a party must formally suggest the death of the party upon the record.
11 Second, the suggesting party must serve other parties and nonparty successors or
representatives of the deceased with a suggestion of death in the same manner as
required for service of the motion to substitute.

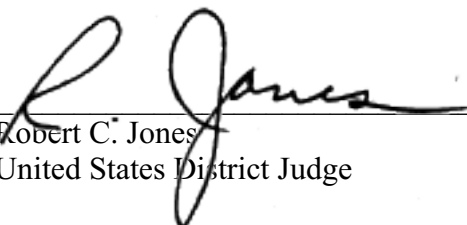
12 *Barlow*, 39 F.3d at 233 (nonparty successors or representatives of the deceased party must be served
13 the suggestion of death in the manner provided by Rule 4).

14 Since it appears that the decedents' successors or representatives have not been served, the
15 90-day period within which a substitution motion may be made or the action will be dismissed has
16 not been triggered yet. *See id.* at 233–34. If Defendants have attempted to identify Plaintiffs'
17 successors or representatives, but have failed to ascertain any such persons, then Defendants should
18 submit an affidavit or declaration attesting to such efforts. At this time, the Court has received no
19 indication from Defendants whether Plaintiffs have any successors or representatives and whether
20 they were served, or whether Defendants have been unable to identify any successors or
21 representatives. Plaintiffs' death does not automatically terminate the Court's jurisdiction. *See id.*
22 at 235 (order dismissing under Rule 25 was reversed and case was remanded for motion to
23 substitute.). Defendants have yet to fully comply with their obligation under Rule 25. *See Boyd v.*
24 *City of Oakland*, 458 F.Supp.2d 1015, 1040 (N.D. Cal. Oct. 17, 2006) (denying motion to dismiss

1 under Rule 25 for failure to provide the court with an assertion or evidence that they complied with
2 the notice requirements of Rule 25); *U.S. v. Seventy-One Firearms*, No. 3:04CV00402, 2006 WL
3 1983240, at #2 (D.Nev. July 13, 2006) (holding that Rule 25's 90-day filing period was not triggered
4 for failure to properly serve non-party representative in compliance with Rule 4).

5 IT IS HEREBY ORDERED that Defendants' motions to dismiss are DENIED. IT IS
6 FURTHER ORDERED that Defendants are granted thirty (30) days to notify the Court of their
7 service of the suggestions of death upon Plaintiffs' successors or representatives, or alternatively,
8 Defendants' unsuccessful efforts to identify Plaintiffs' successors or representatives.

9 Dated: January 5, 2009

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12 Robert C. Jones
13 United States District Judge
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